



January 7, 2002

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Implementation of the Cable Television Consumer Protection
And Competition Act of 1992, CS Docket No. 01-290

Dear Ms. Salas:

The Satellite Industry Association ("SIA")¹, pursuant to Section 1.415 of the Rules of the Federal Communications Commission (the "FCC" or "Commission"),² hereby submit this letter in response to the Notice of Proposed Rulemaking (the "NPRM") issued by the Commission on October 18, 2001, in the above-captioned matter.³

SIA is submitting this letter in partial support of certain comments filed in this proceeding on December 3, 2001. Several commenting parties requested that the Commission extend beyond October 5, 2002, the current statutory prohibition against exclusive contracts for satellite cable or broadcast programming between cable operators

¹ SIA is a national trade association representing the leading U.S. satellite manufacturers, service providers, and launch service companies. SIA serves as an advocate for the U.S. commercial satellite industry on regulatory and policy issues common to its members. With member service companies providing a broad range of manufactured products and services, SIA represents the unified voice of the U.S. commercial satellite industry.

² 47 C.F.R. § 1.415.

³ Implementation of the Cable Television Consumer Protection And Competition Act of 1992, Notice of Proposed Rulemaking, FCC 01-307, CS Docket No. 01-290 (Rel. Oct. 18, 2001).

and their vertically integrated programmers. Many of these commenters also requested that the FCC close the “loophole” in the law that allows circumvention of the exclusivity prohibition by the distribution of cable and broadcast programming terrestrially, instead of via satellite.

If the Commission extends the exclusivity prohibition, it should also close the terrestrial distribution loophole. This “escape clause” creates an unintended and inefficient incentive for cable operators to elect terrestrial means, instead of satellites, for the distribution of programming to cable head ends and broadcast network affiliates, thereby artificially distorting the television programming distribution market, to the detriment of the satellite operators that SIA represents.

The Commission has previously recognized the strong incentive on the part of cable operators and their vertically integrated programmers to move programming to terrestrial distribution channels in order to have the option of providing such programming on an exclusive basis.⁴ Moreover, the FCC has acknowledged its power to address the terrestrial distribution problem, promising that, if cable operators were to switch to terrestrial delivery for the purpose of evading the Commission’s rules, it would “consider an appropriate response to ensure continued access to programming.”⁵

There are a host of quite legitimate reasons (e.g., price, transmission quality) why a programmer might choose to transmit programming either terrestrially or via satellite, consistent with the efficient operation of an undistorted market for the distribution of television programming. The Commission should not allow its regulations to interfere with this market efficiency. Instead, the Commission should adopt an approach of regulatory neutrality as between terrestrial and satellite distribution, by closing the loophole in the regulations that today gives certain programmers an

⁴ Implementation of the Cable Television Consumer Protection and Competition Act of 1992, 13 FCC Rcd 15822, ¶ 71 (1998).

⁵ Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Seventh Annual Report, 22 Comm. Reg. (P&F) 1414, ¶ 182.

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unwarranted incentive to select a terrestrial means of program distribution.

Respectfully submitted,

Satellite Industry Association

By: _____

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